

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

Civil Action No. 05-40071-FDS

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CHRISTIAN SCHWENK  
Plaintiff,

v.

AUBURN SPORTSPLEX, LLC,  
DENNIS NATOLI, JOHN NATOLI,  
AND PETER NATOLI,  
Defendants

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**DEFENDANTS', AUBURN SPORTSPLEX, LLC,  
DENNIS NATOLI, JOHN NATOLI AND PETER NATOLI,  
MOTION FOR SUMMARY JUDGMENT ON  
COUNTS II AND V OF PLAINTIFF'S FIRST AMENDED COMPLAINT**

The Defendants, Auburn Sportsplex, LLC, Dennis Natoli, John Natoli and Peter Natoli (collectively, "Sportsplex"), hereby move, pursuant to Fed. R. Civ. P. 56, that this Court enter Summary Judgment in its favor on Counts II and V of Plaintiff's First Amended Complaint. In support of this motion, Sportsplex states that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law because:

1. The Ownership Purchase Agreement upon which Plaintiff relies in support of his Breach of Contract claim (Count II) required Plaintiff to invoke his "refund" rights within 12 months of the agreement, which Plaintiff failed to do; and
2. Chapter 93A of the Massachusetts General Laws has no application internal private disputes of a business entity.

In further support of this motion, Sportsplex relies on the pleadings filed to date, the Affidavit of William J. Ritter and Defendants' Memorandum in Support of Defendants, Auburn Sportsplex, LLC, Dennis Natoli, John Natoli And Peter Natoli, Motion For Summary Judgment on Counts II and V of Plaintiff's First Amended Complaint.

WHEREFORE, the Defendants respectfully request that this Court enter Summary

Judgment in favor of Defendants, Auburn Sportplex, LLC, Dennis Natoli, John Natoli and Peter Natoli on Counts II and V of Plaintiff's First Amended Complaint.

Auburn Sportsplex, LLC,  
Dennis Natoli, John Natoli,  
and Peter Natoli  
by their attorneys,

s/ William J. Ritter  
William J. Ritter, Esquire  
BBO #552397  
Natañia M. Davis, Esquire  
BBO # 651838  
Pojani Hurley Ritter & Salvidio, LLP  
446 Main Street  
Worcester, MA 01608  
Phone: 508.798.2480

**CERTIFICATE OF SERVICE**

I hereby certify that on June 22, 2006, I served a copy of the within Defendants', Auburn Sportsplex, LLC, Dennis Natoli, John Natoli And Peter Natoli, Motion For Summary Judgment by first class mail postage prepaid upon:

Paul E. Linet, Esquire  
Law Offices of Paul E. Linet, P.C.  
PO Box 533  
Acton, MA 01720

and by electronic filing upon:

Douglas L. Fox, Esquire  
Shumway, Giguere & Fox, P.C.  
19 Cedar Street  
Worcester, MA 01609

s/ William J. Ritter  
William J. Ritter, Esquire  
Natania M. Davis, Esquire